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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,423	10/07/2003	Victoria L. Blinkhorn	B546 0003	3478

720 7590 09/14/2006

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CANADA

EXAMINER
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MOHANDESI, JILA M

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/679,423

Applicant(s)

BLINKHORN ET AL.

Examiner

Jila M. Mohandes

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,6-14 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-14 and 25-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/21/06 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1, 3-4, 6-8, 12-14, 25-26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schumacher (4,917,238) in view of Char '057 and Chu '541. Schumacher '238 discloses a kit comprising a box having a bottom having upstanding

side walls and a lid having an upper and lower surface whereby said box has open and closed configurations, said box being constructed of material suitable for preserving archival material. The kit further comprising flexible tissues (absorbent paper towels 50, 51 & 52) and gloves (57 & 58). The slots (41a and 42a) in the box of Schumacher '238 will inherently permit circulation of air between said upstanding side walls of said bottom and said lower surface of said lid when said box is in the closed configuration.

Schumacher '238 does not appear to teach a flexible opaque cover sized and configured to removably enclose said box when in closed configuration and the box to be made of double wall corrugated plastic (see Figure 18 embodiment). Char '057 discloses that it is desirable to provide an opaque flexible cover over boxes for surrounding and protecting the box from damage during shipping and handling.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flexible opaque cover for the box of Schumacher '238 as taught by Char '057 for surrounding and protecting the box from damage during shipping and handling.

Chu '541 discloses that it is desirable to make boxes from double wall corrugated plastic material; the durability of the corrugated plastic material gives the box properties of moisture resistant, washable, repeatedly reusable and capability of undertaking heavy loads. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the box of Schumacher '238 from double wall corrugated plastic as taught by Chu '541 to provide for a sturdier box with moisture resistant properties for better preserving the article held therein.

With respect to the material of the cover, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the opaque cover of Schumacher '238 from any suitable material such as cotton, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claims 12 and 30, see written instructions (100) in Figure 1 embodiment.

With respect to claim 14, whether the fastening means is flexible ties or any other art recognized equivalent is an obvious matter of choice, such as to require less manual dexterity to operate.

With respect to claim 25, it would have been obvious to one of ordinary skill in the art at the time the invention was made to omit the adhesive from the box of Schumacher '238, since it has been held that omission of an element and its function in a combination where remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

5. Claims 9, 11 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claims 1, 5, 8 and 26 above, and further in view of Heckal (6,080,350). Schumacher '238 as modified above discloses all the limitations of the claims except for the kit including a desiccant and a moisture-absorbing lining material. Heckal '350 discloses that it is desirable to provide a desiccant and moisture-absorbing lining material to containers for absorbing excess

moisture trapped therein. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a desiccant and/or a moisture-absorbing lining material to the kit of Schumacher '238 as taught by Heckal '350 for absorbing excess moisture trapped therein.

6. Claims 10 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claims 1 and 26 above, and further in view of Diehl (4,571,232). Schumacher '238 as modified above discloses all the limitations of the claims except for the kit including a liner. Diehl '232 discloses that it is desirable to provide a liner sized to cover the bottom of the box and to be folded over said item held therein. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a liner to the kit of Schumacher '238 as taught by Diehl '232 for wrapping the item therein.

### ***Response to Arguments***

7. Applicant's arguments filed October 04, 2005 have been fully considered but they are not persuasive. Contrary to applicant's arguments the box of Schumacher '238 will inherently permit air circulation between the base and lid of the container.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'J. M.', with a long horizontal flourish extending to the right.

Jila M Mohandesi  
Primary Examiner  
Art Unit 3728

JMM  
September 12, 2006